

AMENDED IN SENATE APRIL 14, 2009

SENATE BILL

No. 789

Introduced by Senator Steinberg

February 27, 2009

An act to amend Sections 1151.6, 1156, 1156.2, 1156.3, 1156.4, 1157, 1160.3, and 1160.6 of, and to add Section 1156.35 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 789, as amended, Steinberg. Labor representatives: elections.

Existing law prohibits employers from engaging in unfair labor practices, including interfering in the election by agricultural employees of labor representatives to engage in collective bargaining for the designated bargaining units. Existing law also provides criminal and civil penalties for any employer or person who engages in unfair labor practices as determined by the Agricultural Labor Relations Board and the courts.

Existing law provides for a secret ballot election for employees in agricultural bargaining units, as defined, to select labor organizations to represent them for collective bargaining purposes.

This bill would permit agricultural employees, as an alternative procedure, to select their labor representatives by submitting a petition to the board accompanied by representation cards signed by a majority of the bargaining unit. The board would be required to conduct an immediate investigation to determine whether to certify the labor organization as the exclusive bargaining representative for the particular agricultural employees. Within 5 days after receiving a petition, the board would be required to make a nonappealable administrative decision. If the board determined that the representation cards meet

specified criteria, then the labor organization would be certified as the exclusive bargaining representative. If the board determined that the representation cards were deficient, it would notify the labor organization of the deficiency and grant the labor organization 30 days to submit additional cards.

This bill would extend the existing prohibitions and penalties to employers who engage in unfair labor practices with regard to a majority signup election.

~~This bill would require the signatures on the representation cards, used in majority signup elections, to be submitted under penalty of perjury and that the board keep the information on the representation cards confidential.~~

~~By expanding the definition of unfair labor practices for infractions, and requiring that the representation cards be submitted under penalty of perjury, this bill would create a state-mandated local program.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1151.6 of the Labor Code is amended to
2 read:

3 1151.6. A person who willfully resists, prevents, impedes, or
4 interferes with any member of the board or any of its agents or
5 agencies in the performance of duties pursuant to this part is guilty
6 of a misdemeanor, and shall be punished by a fine of not more
7 than five thousand dollars (\$5,000).

8 SEC. 2. Section 1156 of the Labor Code is amended to read:

9 1156. (a) A representative designated or selected by a secret
10 ballot pursuant to Section 1156.3, or by a majority signup election
11 pursuant to Section 1156.35, for the purposes of collective
12 bargaining by the majority of the agricultural employees in a
13 bargaining unit shall be the exclusive representative of all the
14 agricultural employees in the unit for the purpose of collective

1 bargaining with respect to rates of pay, wages, hours of
2 employment, or other conditions of employment.

3 (b) An individual agricultural employee or a group of
4 agricultural employees has the right at any time to present
5 grievances to their agricultural employer and to have those
6 grievances adjusted, without the intervention of the bargaining
7 representative, as long as the adjustment is not inconsistent with
8 the terms of a collective bargaining contract or agreement then in
9 effect, if the bargaining representative has been given opportunity
10 to be present at the adjustment.

11 SEC. 3. Section 1156.2 of the Labor Code is amended to read:

12 1156.2. A bargaining unit is all the agricultural employees of
13 an employer. If the agricultural employees of an employer are
14 employed in two or more noncontiguous geographical areas, the
15 board shall determine the appropriate unit or units of agricultural
16 employees in which a secret ballot election or a majority signup
17 election conducted.

18 SEC. 4. Section 1156.3 of the Labor Code is amended to read:

19 1156.3. (a) A petition that is either signed by, or accompanied
20 by authorization cards signed by, a majority of the currently
21 employed employees in the bargaining unit, may be filed by an
22 agricultural employee or group of agricultural employees, or any
23 individual or labor organization acting on behalf of those
24 agricultural employees, in accordance with any rules and
25 regulations prescribed by the board. The petition shall allege all
26 of the following:

27 (1) That the number of agricultural employees currently
28 employed by the employer named in the petition, as determined
29 from the employer's payroll immediately preceding the filing of
30 the petition, is not less than 50 percent of the employer's peak
31 agricultural employment for the current calendar year.

32 (2) That no valid election pursuant to this section has been
33 conducted among the agricultural employees of the employer
34 named in the petition within the 12 months immediately preceding
35 the filing of the petition.

36 (3) That no labor organization is currently certified as the
37 exclusive collective bargaining representative of the agricultural
38 employees of the employer named in the petition.

39 (4) That the petition is not barred by an existing collective
40 bargaining agreement.

(b) Upon receipt of a signed petition, as described in subdivision (a), the board shall immediately investigate the petition. If the board has reasonable cause to believe that a bona fide question of representation exists, it shall direct a representation election by secret ballot to be held, upon due notice to all interested parties and within a maximum of seven days of the filing of the petition. If, at the time the election petition is filed, a majority of the employees in a bargaining unit are engaged in a strike, the board shall, with all due diligence, attempt to hold a secret ballot election within 48 hours of the filing of the petition. The holding of elections under strike circumstances shall take precedence over the holding of other secret ballot elections.

(c) The board shall make available, at any election or alternative selection process held under this chapter, either ballots or representation cards, as appropriate, and all materials used to select labor representatives printed in English and Spanish. The board may also make available at the election or selection process ballots or representation cards, as appropriate, and all other election materials used to select labor representatives printed in any other language as may be requested by an agricultural labor organization or any agricultural employee eligible to vote under this part. Every election ballot, except ballots in runoff elections where the choice is between labor organizations, shall provide the employee with the opportunity to vote against representation by a labor organization by providing an appropriate space designated “No Labor Organizations.”

(d) Any other labor organization shall be qualified to appear on the ballot if it presents authorization cards signed by at least 20 percent of the employees in the bargaining unit at least 24 hours prior to the election.

(e) (1) Within five days after an election, any person may file with the board a signed petition asserting that allegations made in the petition filed pursuant to subdivision (a) were incorrect, asserting that the board improperly determined the geographical scope of the bargaining unit, or objecting to the conduct of the election or conduct affecting the results of the election.

(2) Upon receipt of a petition under this subdivision, the board, upon due notice, shall conduct a hearing to determine whether the election shall be certified. This hearing may be conducted by an officer or employee of a regional office of the board. The officer

1 may not make any recommendations with respect to the
2 certification of the election. The board may refuse to certify the
3 election if it finds, on the record of the hearing, that any of the
4 assertions made in the petition filed pursuant to this subdivision
5 are correct, that the election was not conducted properly, or that
6 misconduct affecting the results of the election occurred. The board
7 shall certify the election unless it determines that there are
8 sufficient grounds to refuse to do so.

9 (f) If no petition is filed pursuant to subdivision (e) within five
10 days of the election, the board shall certify the election.

11 (g) The board shall decertify a labor organization if either of
12 the following occur:

13 (1) The Department of Fair Employment and Housing finds that
14 the labor organization engaged in discrimination on any basis listed
15 in subdivision (a) of Section 12940 of the Government Code, as
16 those bases are defined in Sections 12926 and 12926.1 of the
17 Government Code, except as otherwise provided in Section 12940
18 of the Government Code.

19 (2) The United States Equal Employment Opportunity
20 Commission finds, pursuant to Section 2000e-5 of Title 42 of the
21 United States Code, that the labor organization engaged in
22 discrimination on the basis of race, color, national origin, religion,
23 sex, or any other arbitrary or invidious classification in violation
24 of Subchapter VI of Chapter 21 of Title 42 of the United States
25 Code during the period of the labor organization's present
26 certification.

27 SEC. 5. Section 1156.35 is added to the Labor Code, to read:

28 1156.35. (a) As an alternative procedure to the secret ballot
29 election process set forth in Section 1156.3, a labor organization
30 may be certified as the exclusive bargaining representative of a
31 bargaining unit through a majority signup election. A majority
32 signup election permits a bargaining unit to summarily select a
33 labor organization as its representative for collective bargaining
34 purposes without holding a representation election.

35 (b) A labor organization that wishes to represent a particular
36 bargaining unit, as defined in Section 1156.2, may be certified
37 through a majority signup election as that unit's bargaining
38 representative by submitting to the board a petition for majority
39 signup election. The petition must allege the following:

1 (1) That the number of agricultural employees currently
2 employed by the employer named in the petition for majority
3 signup election, as determined from the employer's payroll
4 immediately preceding the filing of the petition for majority signup
5 election, is not less than 50 percent of the employer's peak
6 agricultural employment for the current calendar year.

7 (2) That no valid election has been conducted among the
8 agricultural employees of the employer named in the petition for
9 majority signup election within the 12 months preceding the filing
10 of the petition.

11 (3) That no labor organization is currently certified as the
12 exclusive collective bargaining representative of the agricultural
13 employees of the employer named in the petition for majority
14 signup election.

15 (4) That the petition is not barred by an existing collective
16 bargaining agreement.

17 (c) (1) The petition for majority signup election in subdivision
18 (b) must be accompanied by representation cards signed by more
19 than 50 percent of the currently employed employees. For purposes
20 of this section, "currently employed employees" means those
21 agricultural employees of the employer who were employed at
22 any time during the employer's last payroll period that ended prior
23 to the filing of the petition for majority signup election.

24 (2) The representation cards must be titled "ALRB
25 Representation Cards for Certification of a Labor Organization."

26 (3) Each representation card must include the following:

27 (A) A statement that the employee signing it wishes to have a
28 specified labor organization as his or her collective bargaining
29 representative with respect to rates of pay, wages, hours of
30 employment, and other conditions of employment.

31 (B) A statement that no promises or threats were made to obtain
32 the employee's signature on the card.

33 (C) An acknowledgment that by signing the card the employee
34 is manifesting a desire to be represented by a labor organization.

35 (D) An acknowledgment that the employee is aware of the
36 toll-free telephone number of the Agriculture Labor Relations
37 Board, which is available to complain about coercion or other
38 unfair labor practices.

39 (E) Sufficient space for the following information: the name of
40 labor organization; the name of the agricultural employer; the

1 employee's name, address, and telephone number; the name of
2 the employee's foreman; the signature of the employee; the name,
3 address, telephone number, and the signature of the person
4 witnessing that the employee signed the card; and the date when
5 the card was signed.

6 ~~(F) The following statement, to be signed by the employee~~
7 ~~signing the representation card: "I declare under penalty of perjury~~
8 ~~under the laws of California that I am employed by the agricultural~~
9 ~~employer that is named in this representation card."~~

10 ~~(G) The following statement, to be signed by the person who~~
11 ~~witnesses the employee signing the representation card: "I declare~~
12 ~~under penalty of perjury under the laws of California that I~~
13 ~~witnessed the signing of this representation card and that, to the~~
14 ~~best of my knowledge, information, and belief, the employee who~~
15 ~~signed this representation card was not intimidated, threatened, or~~
16 ~~coerced in any way and was not paid any money or other thing of~~
17 ~~value in exchange for signing this representation card."~~

18 (4) The board shall maintain the confidentiality and secrecy of
19 the employee name on the representation card. The board shall
20 give the representation card the same confidentiality and secrecy
21 as a regular election ballot.

22 (5) Upon the request of a labor organization, the board shall
23 issue standardized representation cards for use with a petition for
24 majority signup election, in accordance with subdivision (c) of
25 Section 1156.3.

26 (6) A representation card is valid, for the purpose of supporting
27 a petition for majority signup election, if it contains the name of
28 the labor organization, the name of the employee, and the
29 employee's signature. A labor organization may fill out all of the
30 information contained in a representation card, except for the
31 employee's signature.

32 (7) A representation card remains valid for 12 months after it
33 is signed by an agricultural employee.

34 (d) A labor organization submitting a petition for a majority
35 signup election shall personally serve the petition on the employer
36 on the same day that the petition is filed with the board. Within
37 48 hours after the petition is served, the employer shall file with
38 the board its response to the petition. As part of the response, the
39 employer shall provide a complete and accurate list of the full
40 names, current street addresses, and job classifications of all

1 currently employed employees in the bargaining unit. The employer
2 shall organize the employees' names and addresses and other
3 information by crew or department and shall provide the list to the
4 board in hard copy and electronic format. Immediately upon
5 receiving the list, the board shall provide a hard copy and an
6 electronic copy to the labor organization that filed the majority
7 signup election petition.

8 (e) (1) Upon receipt of a petition for majority signup election,
9 the board shall immediately commence an investigation regarding
10 the validity of the petition and the accompanying representation
11 cards. Within five days of receipt of the petition, the board shall
12 make an administrative determination as to whether the
13 requirements set forth in subdivision (b) are met by the petition
14 and whether the labor organization submitting the petition has
15 submitted the number of representation cards required by paragraph
16 (1) of subdivision (c). In making this determination, the board shall
17 compare the names on the representation cards submitted by the
18 labor organization to the names on the list of currently employed
19 employees provided by the employer. The board shall ignore
20 discrepancies between the employee's name listed on the
21 representation card and the employee's name on the employer's
22 list if the preponderance of the evidence, such as the employee's
23 address and the name of the employee's foreman, shows that the
24 employee who signed the card is the same person as the employee
25 on the employer's list.

26 (2) The board shall return those representation cards that it finds
27 invalid to the labor organization that filed the petition for majority
28 signup election, with an explanation as to why each representation
29 card was found to be invalid. To protect the confidentiality of the
30 names on the representation cards, the board's determination of
31 whether a particular card is valid shall be final and not subject to
32 appeal or review.

33 (3) If the board determines that the labor organization has
34 submitted the required number of representation cards and met the
35 requirements set forth in this section and in Section 1156.4, it shall
36 immediately certify the labor organization as the exclusive
37 bargaining representative of the employees in the bargaining unit.
38 An employer's duty to bargain with the labor organization
39 commences immediately after the labor organization is certified.

1 (4) If the board determines that the labor organization has not
2 submitted the requisite number of valid representation cards, or
3 that the representation cards fail to meet the requirements set forth
4 in this section or in Section 1156.4, the board shall notify the labor
5 organization of the deficiency and grant the labor organization 30
6 days from the date it is notified to submit additional representation
7 cards.

8 (f) (1) Within five days after the board certifies a labor
9 organization through a majority signup election, any person may
10 file with the board a petition objecting to the certification on one
11 or more of the following grounds:

12 (A) Allegations in the majority signup petition were false.

13 (B) The board improperly determined the geographical scope
14 of the bargaining unit.

15 (C) The majority signup election was conducted improperly.

16 (D) Improper conduct affected the results of the majority signup
17 election.

18 (2) Upon receipt of a petition objecting to certification, the board
19 shall conduct a hearing to rule on the petitioner's objections, and
20 shall mail a notice of the time and place of the hearing to the
21 petitioner and the labor organization whose certification is being
22 challenged. If the board finds at the hearing that any of the
23 allegations in the petition of the grounds set forth in paragraph (1)
24 are true, the board shall revoke the certification issued under
25 subdivision (e).

26 (3) The filing of a petition objecting to a majority signup election
27 certification shall not diminish the duty to bargain or delay the
28 running of the 180-day period set forth in subdivision (a) of Section
29 1164.

30 (4) If the board finds, after a hearing, that an employer has
31 assisted, supported, created, or dominated a labor organization for
32 the purpose of filing a majority signup election petition, the board
33 shall order the employer to pay for all the costs and expenses
34 incurred by a labor organization challenging a majority signup
35 election.

36 (g) The board shall not permit the filing of an election petition
37 pursuant to Section 1156.3 once a majority signup petition is filed
38 until the board determinates whether the labor organization filing
39 the majority signup election petition should be certified.

1 (h) Once a labor organization has filed a majority signup election
2 petition, no other majority signup election petition shall be
3 considered by the board with the same agricultural employer until
4 the board determines whether the labor organization that filed the
5 pending majority signup election petition should be certified.

6 (i) For purposes of Section 1156.5, a majority signup election
7 is a valid election.

8 SEC. 6. Section 1156.4 of the Labor Code is amended to read:

9 1156.4. Recognizing that agriculture is a seasonal occupation
10 for a majority of agricultural employees, and wishing to provide
11 the fullest scope for employees' enjoyment of the rights included
12 in this part, the board shall not consider a representation petition,
13 petition for majority signup election, or a petition to decertify as
14 timely filed unless the employer's payroll reflects 50 percent of
15 the peak agricultural employment for such employer for the current
16 calendar year for the payroll period immediately preceding the
17 filing of the petition.

18 In this connection, the peak agricultural employment for the
19 prior season shall alone not be a basis for this determination, but
20 rather the board shall estimate peak employment on the basis of
21 acreage and crop statistics, which shall be applied uniformly
22 throughout the State of California, and upon all other relevant data.

23 SEC. 7. Section 1157 of the Labor Code is amended to read:

24 1157. All agricultural employees of the employer whose names
25 appear on the payroll applicable to the payroll period immediately
26 preceding the filing of the petition for a representation election or
27 a majority signup election shall be eligible to vote. An economic
28 striker shall be eligible to vote under such regulations as the board
29 finds are consistent with the purposes and provisions of this part
30 in any election, provided that the striker who has been permanently
31 replaced shall not be eligible to vote in any election conducted
32 more than 12 months after the commencement of the strike.

33 In the case of elections conducted within 18 months of the
34 effective date of this part which involve labor disputes that
35 commenced prior to the effective date, the board shall have the
36 jurisdiction to adopt fair, equitable, and appropriate eligibility
37 rules, which shall effectuate the policies of this part, with respect
38 to the eligibility of economic strikers who were paid for work
39 performed or for paid vacation during the payroll period
40 immediately preceding the expiration of a collective bargaining

1 agreement or the commencement of a strike, provided that in no
2 event shall the board afford eligibility to any striker who has not
3 performed any services for the employer during the 36-month
4 period immediately preceding the effective date of this part.

5 SEC. 8. Section 1160.3 of the Labor Code is amended to read:

6 1160.3. (a) The testimony taken by a member, agent, or
7 agency, or the board in a hearing shall be reduced to writing and
8 filed with the board. Thereafter, in its discretion, the board, upon
9 notice, may take further testimony or hear argument.

10 (b) If, based upon the preponderance of the testimony taken,
11 the board finds that a person named in the complaint has engaged
12 in or is engaging in any unfair labor practice, the board shall state
13 its findings of fact and shall issue and cause to be served on the
14 person an order requiring that person to cease and desist from the
15 unfair labor practice and to take affirmative action, including
16 reinstatement of employees with or without backpay, making
17 employees whole, when the board deems such relief appropriate,
18 for the loss of pay resulting from the employer's refusal to bargain,
19 and providing any other relief as would effectuate the policies of
20 this part. Where an order directs reinstatement of an employee,
21 backpay may be required of the employer or labor organization,
22 as the case may be, responsible for the discrimination suffered by
23 the employee. The order may further require the person named in
24 the complaint to make reports from time to time showing the extent
25 to which the employer has complied with the order.

26 (c) If the board finds that an employer has willfully or repeatedly
27 committed an unfair labor practice under subdivision (a) or (c) of
28 Section 1153 while employees of the employer were seeking
29 representation by a labor organization or after a labor organization
30 was designated as a representative under Section 1156, the board
31 may, in addition to any order permitted by this section, impose a
32 civil penalty of up to twenty thousand dollars (\$20,000) for each
33 violation. The board shall determine the amount of any civil penalty
34 imposed based upon the impact of the unfair labor practice on the
35 charging party or on other persons seeking to exercise rights
36 guaranteed by this part, or on the public interest.

37 (d) If, upon the preponderance of the testimony taken, the board
38 finds that the person named in the complaint has not engaged in
39 or is not engaging in any unfair labor practice, the board shall state
40 its findings of fact and shall issue an order dismissing the

1 complaint. An order of the board shall not require the reinstatement
2 of any individual as an employee who has been suspended or
3 discharged, or the payment to him or her of any backpay, if the
4 individual was suspended or discharged for cause. In case the
5 evidence is presented before a member of the board, or before an
6 administrative law officer thereof, the member or administrative
7 law officer, as the case may be, shall issue and cause to be served
8 on the parties to the proceedings a proposed report, together with
9 a recommended order, which shall be filed with the board, and, if
10 no exceptions are filed within 20 days after service thereof upon
11 the parties, or within a further period as the board may authorize,
12 the recommended order shall become the order of the board and
13 become effective as therein prescribed.

14 (e) Until the record in a case has been filed in a court, as
15 provided in this chapter, the board may, at any time upon
16 reasonable notice and in such manner as it shall deem proper,
17 modify or set aside, in whole or in part, any finding or order made
18 or issued by it.

19 SEC. 9. Section 1160.6 of the Labor Code is amended to read:

20 1160.6. (a) Whenever it is charged that (1) an employer has,
21 while the employees of that employer were seeking representation
22 by a labor organization or during the period after a labor
23 organization was recognized as a representative, discharged or
24 otherwise discriminated against an employee in violation of
25 subdivision (c) of Section 1153, threatened to discharge or to
26 otherwise discriminate against an employee in violation of
27 subdivision (a) of Section 1153, or engaged in any other unfair
28 labor practice within the meaning of subdivision (a) of Section
29 1153 that significantly interfered with, restrained, or coerced
30 employees in the exercise of the rights guaranteed in Section 1152,
31 or (2) a person has engaged in an unfair labor practice within the
32 meaning of paragraph (1), (2), or (3) of subdivision (d), or of
33 subdivision (g), of Section 1154, or of Section 1155, the
34 preliminary investigation of the charge shall be made forthwith
35 and given priority over all other cases except cases of like character
36 in the office where it is filed or to which it is referred.

37 (b) If, after the investigation, the officer or regional attorney to
38 whom the matter may be referred has reasonable cause to believe
39 the charge is true and that a complaint should issue, he or she shall,
40 on behalf of the board, petition the superior court in the county in

1 which the unfair labor practice in question has occurred, is alleged
2 to have occurred, or where the person alleged to have committed
3 the unfair labor practice resides or transacts business, for
4 appropriate injunctive relief pending the final adjudication of the
5 board with respect to the matter. The officer or regional attorney
6 shall make all reasonable efforts to advise the party against whom
7 the restraining order is sought of his or her intention to seek an
8 order at least 24 hours prior to doing so. In the event the officer
9 or regional attorney has been unable to advise a party of his or her
10 intent at least 24 hours in advance, he or she shall submit a
11 declaration to the court under penalty of perjury setting forth in
12 detail the efforts he or she has made. Upon the filing of a petition,
13 the superior court shall have jurisdiction to grant such injunctive
14 relief or temporary restraining order as it deems just and proper.
15 Upon the filing of a petition, the board shall cause notice thereof
16 to be served upon any person involved in the charge, and that
17 person, including the charging party, shall be given an opportunity
18 to appear by counsel and present any relevant testimony. For the
19 purposes of this section, the superior court shall be deemed to have
20 jurisdiction of a labor organization either in the county in which
21 the organization maintains its principal office, or in any county in
22 which its duly authorized officers or agents are engaged in
23 promoting or protecting the interests of employee members. The
24 service of legal process upon an officer or agent shall constitute
25 service upon the labor organization and make the organization a
26 party to the suit. In situations where such relief is appropriate, the
27 procedure specified herein shall apply to charges with respect to
28 paragraph (4) of subdivision (d) of Section 1154.

29 SEC. 10. No reimbursement is required by this act pursuant to
30 Section 6 of Article XIII B of the California Constitution because
31 the only costs that may be incurred by a local agency or school
32 district will be incurred because this act creates a new crime or
33 infraction, eliminates a crime or infraction, or changes the penalty
34 for a crime or infraction, within the meaning of Section 17556 of
35 the Government Code, or changes the definition of a crime within
36 the meaning of Section 6 of Article XIII B of the California
37 Constitution.